

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

JAMES L. FARRAGUT and SCHEWIDA FARRAGUT

PLAINTIFFS

V.

CIVIL ACTION NO.1:06CV0636 LTS-JMR

NATIONWIDE MUTUAL FIRE INSURANCE COMPANY, ET AL. DEFENDANTS

**OPINION AND ORDER DENYING PLAINTIFFS' MOTION
TO EXCLUDE TESTIMONY OF EXPERT WITNESSES**

The Court has before it the plaintiffs' motions [40] [41] to exclude the testimony of two experts retained by Defendant Nationwide Mutual Fire Insurance Company's (Nationwide). Although the motion is cast as a *Daubert* challenge to the methodology these experts have used, it is in substance a challenge based on a conflict between the conclusion drawn by the Nationwide experts concerning the height of the storm surge during Katrina and the testimony of an eyewitness. The plaintiffs characterize the testimony of the eyewitness as "undisputed," but the defendants do not agree with that characterization. Nationwide asserts that the measurements these experts relied upon provides an accurate estimate of the height of the storm surge at the property in question.

Assuming that Nationwide succeeds in establishing the qualifications of its experts and the validity of the method these experts used to reach their opinions, the experts are not disqualified because their conclusions are in conflict with the testimony of an eyewitness. All witnesses, both lay and expert, are susceptible to errors and miscalculations, and all witnesses, both lay and expert, are subject to cross-examination to test the validity of their testimony. It is for the finder of fact to resolve conflicts in testimony on a full record, and such a conflict is not grounds for the disqualification of an otherwise qualified expert witness.

Accordingly, the plaintiffs' motions [40][41] to exclude expert testimony are hereby **DENIED**.

SO ORDERED this 5th day of October, 2007.

s/ L. T. Senter, Jr.
L. T. SENTER, JR.
SENIOR JUDGE